

1 got a, you know, a touchy medical condition and the fact
2 that it did exist, and that they weren't able to do
3 something at a particular time is important, but that
4 everyone know exactly what condition they have may not
5 be important and may be a very sensitive issue and not
6 necessarily a trade secret or something a competitor
7 would use against them in that sense.

8 MS. RUWART: And that's not something easily
9 definable.

10 MR. HELLER: And so it's not to say -- I'm not
11 asking everyone to come up with that definition. I'm
12 just suggesting that's why we did it. And we definitely
13 will look at trade secrets as something workable.

14 MR. KAMP: What I would suggest is trade
15 secrets and the other privacy areas. You need to really
16 speak to somebody who is a privacy law expert. And I'm
17 convinced those people exist. They probably even have
18 Internet websites you might even find, you know.

19 MR. MICHAELS: Even court cases address this.

20 MS. RUWART: Okay. Those are all good ideas.
21 Okay. Subsection (b). This is what you need to do to
22 make a request. Any comments particularly? Okay.
23 Subsection (c), how you send the request in.

24 MR. MICHAELS: So it's mailed to the Chief of
25 proceedings, who in turn will pass it on to the Chair.

1 MS. RUWART: Well, presumably, that's
2 contemplated. In section (d), any comments on that?

3 MR. MICHAELS: Well, definitely. The Chair may
4 take whatever action it -- I guess the Chair is an
5 object now -- deems necessary -- well, most chairs are
6 objects -- whatever action it deems necessary to
7 preserve the confidentiality of sensitive information.

8 Now, we were all at the hearing yesterday --
9 well, we weren't, but some of us were. We saw one
10 example of a reaction by a Chair which was a summary
11 reaction. The hearing's public. End of discussion. So
12 it comes down to some individual's impulse at the
13 moment.

14 MS. RUWART: I think that's a bit dramatic,
15 especially since in this particular case the taxpayer
16 submits it in writing. And why don't we move to
17 consider subsection (e) at the same time.

18 MR. SCHUTZ: Before moving on, is there any,
19 like, list of things that the Chair can do to preserve
20 it? I mean, the number of different things that they
21 could do or . . .

22 MS. RUWART: You know, here's the way we
23 structure this is, everybody, whenever they see these
24 broad general rules and provisions and authorities and
25 discretion, says, well, tell me exactly what it is, and

1 then as soon as you try and define it, you find the one
2 thing that doesn't fall in there and the one thing you
3 want to do that now you have the laundry list of things
4 you only can do.

5 And I mean, you know, they were thinking of,
6 you know, medical condition, this and that. I was
7 thinking back-door conversation this morning about
8 innocent spouse cases. There may be things that are
9 just usually public information, where you work or what
10 you do or what your schedule is, that in a particular
11 instance would be very harmful.

12 And the way that you would preserve that might
13 be something like do the one spouse at 9:00 and the
14 other spouse at 10:00. You know, that's an innovative
15 way.

16 We want to give -- we want to have a single
17 person who makes a decision, a single point of contact,
18 and we want it to be a responsible person who is
19 accountable and that we give them the flexibility to
20 know the sensitivity when they see it and be able to do
21 whatever is necessary.

22 If you have any other ideas of how to go -- but
23 that was our theory and our philosophy.

24 MS. CROCETTE: Yeah. This is Sabina. I'm just
25 chiming in. By having a Chair do it, moreover, when you

1 make the request, you're always free to say how you
2 think it should be done and they will take that into
3 consideration. You think they should do X, Y and Z to
4 protect the privacy in this manner. So it does give the
5 taxpayer an opportunity to have something to say.
6 Whether they do it is another matter, but at least they
7 get a chance to say how they think it should be done.

8 MR. HELLER: Absolutely. I think also, in case
9 anybody -- I think it's the unasked question, but we did
10 choose the Chair because we really run into issues that
11 if we have the Board decide the issue, then we end up in
12 a meeting again, and then we end up with issues of
13 whether this can be discussed in what forum and whether
14 it should be closed or not.

15 And then we felt that people wouldn't feel that
16 having, like, a Chief of Board Proceedings decide what
17 information was being disclosed would be appropriate
18 necessarily, so that's why we chose the Chair. But
19 it -- you know, we certainly didn't think that that was
20 necessarily the most optimal situation.

21 MR. MICHAELS: Does this contemplate -- let's
22 hypothesize that I submit a request in writing --
23 probably far-fetched -- but that I submit a request in
24 writing specifically identifying some sensitive
25 information. Will there be -- does this contemplate any

1 kind of reply, response, answer, yeah, but?

2 MS. RUWART: Allow me to move to subsection (e)
3 for comment. The taxpayer will be notified of the
4 Chair's decision no later than five days prior to the
5 issuance of the public agenda notice.

6 The rationale for that was to give both the
7 taxpayer and the Chair the maximum amount of time
8 beforehand to figure out what the issues were, because
9 the other thing we realized was just because a taxpayer
10 puts in a request, that's not necessarily all that they
11 can do to make a decision. It may be back and forth.
12 But we wanted to give the taxpayer enough time before
13 the agenda notice to be able to decide whether to waive
14 or not.

15 MS. MANDEL: I think Peter's question probably
16 went to I'm a taxpayer in an FTB case or I'm a taxpayer
17 in a -- you know, is staff or FTB going to say, no, no,
18 we think it should be this?

19 MR. MICHAELS: Yeah. The Chair calls
20 Mr. Thompson here and says, hey, I got this quash
21 write-up from this joker. Should I grant it or not?
22 And he says, of course not. Does this contemplate
23 communication outside -- you know, I write something in
24 to Debbie; right? And then what? Is there feedback?

25 The Chair's not going to know. The Chair's

1 going to have to ask somebody in one of the divisions
2 and get advice, and there's a whole conversation there
3 that I'm not part of, that I don't know what's being
4 said, that, you know, is in their own interest. I mean,
5 no offense, but it's in their interest obviously to have
6 a differing view.

7 MR. SCHUTZ: Can the Chair even prohibit other
8 members from bringing something up? I mean, if the
9 Chair says, no, we don't want to talk about this, and
10 another member says, well, I want to talk about this,
11 can he even prohibit the other member from talking about
12 it?

13 MR. KAMP: I don't think so. I don't think so.

14 MR. SCHUTZ: So, I mean, it seems like it's
15 sort of ridiculous then to ask the Chair to do this when
16 he can't control the other members.

17 MS. RUWART: Just let me answer this quickly.
18 Maybe this is the same thing. If other members wanted
19 to do that, the only way they can do that is once they
20 get to the meeting, and then it's an open meeting, and
21 at least they have a meeting that we've noticed and
22 there's something going on there, so it's --

23 MS. MANDEL: I would think that -- this is
24 Marcy -- I would think that if the Chair has
25 determined -- someone files something, says keep this

1 confidential; the Chair's determined, yes, I'm going to
2 keep that confidential.

3 If it's a document of any kind, the document's
4 going to -- when it goes to the Board members, it's
5 going to have to be stamped "confidential" somehow, you
6 would think. Well, if it's already gone, you know. But
7 somebody's going to have to keep -- I mean, we have had
8 things that were confidential and we have had to -- not
9 on a hearing, but, you know, not on a case hearing, but
10 in another context, where we have had to, you know, hey,
11 hey, hey, hey, hey, that's confidential, can't talk
12 about that, can't talk about that. Oh, oh, oh, oh, oh.
13 You know, they saw the big "confidential" stamp.

14 MR. SCHUTZ: But that's because it's
15 confidential, not because of some decision by --

16 MS. MANDEL: Right, right. But it -- but it
17 seems if this regulation went through and the Chair did
18 that, made something confidential, agreed to keep
19 something confidential, and a Board member wanted to
20 speak about it, I understand it's hard to control what's
21 going to come out of those mouths. But if they wanted
22 to speak about it at the meeting, somebody -- and
23 whether it's, you know, the Chair staying on top of it
24 or the other members staying on top of it or somebody's
25 staff staying on top of it, to cut it off and maybe

1 they'd be able to make a motion to overrule the Chair.
2 I don't know. They'd have to get three votes. But
3 yeah, it is hard to control what comes out of the mouths
4 of people when they're up there.

5 MS. RUWART: Jon.

6 MR. SPERRING: Jon Sperring. The question I
7 had for staff is if they gave any thought to including
8 the Chief Counsel, either having the Chief Counsel make
9 the decision, or if not make the decision, have the
10 Chief Counsel advise the Chair.

11 It just seems that that way the Chair is not
12 sitting there going, well, what do I do? And then, you
13 know, the Chair is now charged with going and talking to
14 maybe Ken, who I would assume would be the wrong person
15 just because Ken is an appraiser and is not necessarily
16 on the legal side, but maybe Ken would be the right
17 person.

18 So, you know, it seems like you would create a
19 continuum if you had one person there that would sort of
20 be the point person on this.

21 MS. RUWART: Very good. Great comments on the
22 mechanics of how it all needs to work if it's going to
23 work. Yes.

24 MR. NIELSEN: I guess this is fine if you know
25 in advance exactly what you're going to present 15 days

1 before the hearing and also if you know what the other
2 side's going to be putting in to try to address the
3 issue. But there's nothing in here about on the day of
4 the hearing, maybe the day before, you threw together a
5 declaration or you got something else, because, you
6 know, with franchise, you can, you know, quasi-judicial
7 where you can present evidence at the hearing, so, you
8 know, like, again, at the assessment appeals Board local
9 level, the requirement is you present something, you
10 know, either before the hearing begins, that day, or
11 even during the hearing, when the issue comes up, you've
12 got to have, you know, a declaration and you've got to
13 have some pleading, and it's sort of just like what was
14 stated down there, then usually the city attorney's
15 sitting there and advising the Chair of the assessment
16 appeals Board as to whether it meets all the conditions,
17 and then, you know, a ruling is made.

18 MS. RUWART: What we should probably do is look
19 at subsection (c) and just have a -- you know, this is
20 the normal way and then have a separate accounting for
21 things that would come in later than that for whatever
22 reason.

23 MR. NIELSEN: Then my final comment is maybe
24 part of the problem here is that you have "sensitive"
25 and I think that's being carried over from Subdivision

1 (3) in the prior section.

2 MS. RUWART: Right.

3 MR. NIELSEN: And then you also have "harmful."

4 To me those are almost redundant. I mean, if
5 it's "sensitive," then you would think somebody is going
6 to take the position it's harmful or vice versa.

7 MS. RUWART: Okay.

8 MR. NIELSEN: So maybe there's a little
9 overkill here. Maybe just take out the word
10 "sensitive," you know. And again, "harmful," I think,
11 is kind of a vague term also, but at least, it's -- if
12 it's -- as Mr. Kamp indicated, if it's adjusted under
13 1604(c), trade secrets, then expand upon that or
14 something.

15 MS. RUWART: Okay. I'm sorry, yes.

16 MR. MICHAELS: Just procedurally, one question,
17 and that is hypothetically, I file an appeal today, and
18 tomorrow, and I know all of my exhibits -- actually we
19 do know before we go to hearing what we're going to
20 introduce -- I file under (b) here something with Debbie
21 the following day, way before I get the agenda that
22 comes out, way before any of this decision making takes
23 place, and is there any timing on when --

24 MS. RUWART: The timing is under the current
25 version, which I -- which we came to after great thought

1 is, you may hear radio silence for months and then five
2 days before --

3 MR. MICHAELS: Until five days before, until
4 after I have had a chance to waive.

5 MS. RUWART: No, no, no, before. Five days
6 before.

7 MR. MICHAELS: So 15 days presumably before the
8 hearing?

9 MS. RUWART: That's right. And just because --

10 MR. MICHAELS: Even though I submit my request
11 four months earlier.

12 MR. HELLER: The only other deadline for
13 submitting requests, and it is basically the deadline to
14 respond to the notice of hearing, and so basically we're
15 really thinking that the idea would be to get people
16 into the process and then let them go through the
17 process, see if the case doesn't get resolved in the
18 process itself, and then as it appears that it's going
19 to be scheduled for hearing and notices are going out,
20 that's the time when a practitioner who knows they
21 haven't resolved things and has a sensitive issue that
22 might still go to the Board could then file a request.
23 If they're all coming in really late, it won't give us a
24 lot of time to respond, but we're setting it up to
25 respond as quickly as we can.

1 MS. RUWART: The Chair would be free to send a
2 response earlier.

3 MS. KINDALL: You may have the opposite
4 situation. Ami Kindall.

5 You may have the opposite situation. If I were
6 a practitioner wearing a different hat than I have ever
7 worn, every single thing that I have that even remotely
8 could be considered sensitive or harmful, as I submitted
9 it to the Board, I would mark it "confidential" and I
10 would make this request. I wouldn't wait.

11 MR. MICHAELS: We do.

12 MS. RUWART: He's asking about the response
13 time.

14 MS. KINDALL: I know, I'm saying workload. I
15 keep seeing the workload concern, but that is a real
16 concern.

17 MR. MICHAELS: Yes, we do mark everything
18 "confidential."

19 MS. KINDALL: Now, you've got the Chair staff,
20 that's most likely who is going to be working on this,
21 trying to figure out what to do with all these documents
22 that come in and are being marked "sensitive" and marked
23 "confidential" and you have to make a decision on each
24 of those.

25 I missed something when I was reading this. I

1 hadn't realized that this is publicly discussed. I was
2 thinking in terms of documents and that the document
3 would now fall under the new rule, that it's publicly
4 disclosable or that the document falls under the old
5 rule and it's not.

6 But if you're talking about publicly discussed,
7 you're almost getting into the issue of closed session
8 here, so that's a whole other consideration.

9 And as Peter Michaels said, there is authority
10 to go into closed session in other State assessees --

11 MR. MICHAELS: I never said that. I never said
12 that.

13 MS. KINDALL: So you've got that option.

14 MS. RUWART: And actually we did intend to
15 capture that, that that gives one of the -- without
16 stating it specifically, that is one of the options,
17 that is one of the tools, the actions that they may deem
18 necessary to do what they need to do.

19 MS. KINDALL: Got it.

20 MS. MANDEL: Carole, Marcy.

21 On the five days before the public notice,
22 which is effectively 15 days before your hearing, having
23 probably been the last person who actually managed to
24 get documents sealed in a State assessee case, in the
25 next year in which the documents were not sealed by the

1 Board at a hearing, for which we had no notice that they
2 were going to discuss whether they were going to seal
3 our documents and then they sent them of course to
4 another law firm instead of to us, and we were told by
5 Board proceedings that if we wanted we could submit some
6 different financial information in a different form if
7 we could figure out a form that the client would be okay
8 with having become public, if we had gotten -- I mean, I
9 don't know, if we had got that five days before the
10 hearing, which may not be five business days before the
11 hearing, you know, that has a potential to put a
12 taxpayer in a bind.

13 If they go, oh, my God, this stuff is too
14 sensitive. That guy who is Chair or gal who is Chair
15 didn't seal it. I don't -- I really don't want to risk
16 this. Turn around to the client and client says, "I
17 really don't want to risk it but I really need to fight
18 this case," well, I guess they either punt the Board of
19 Equalization hearing and just sue and go to court where
20 they can get something sealed, would be someone's
21 reaction, but if they really want a hearing before the
22 Board of Equalization, I guess they would then
23 presumably have to request an extension, a continuance
24 of the hearing, to be able to put together a package
25 that wouldn't, you know, that maybe doesn't do as good a

1 job as they think their sensitive package does.

2 MS. RUWART: If there's -- that's a good
3 thought.

4 Unfortunately, we're trying to move along, but
5 if there's a problem with the timing or that kind of
6 issue, that's great. We'll just -- and we'll put this
7 out there with a practical impacts and that's something
8 to consider.

9 MR. HELLER: Real quick, just to wrap up, and I
10 think we do need to move forward because we basically
11 now have 45 minutes to go through the rest of Part 5,
12 because so many of us want to leave at 4:30, but
13 essentially, you know, we are aware of the Open Meeting
14 Act, and we're definitely aware of all the concerns that
15 were raised by Peter and Ami as well. They're
16 definitely serious concerns of ours, and we're aware
17 that lots of this does entail the use of the Open
18 Meeting Act's closed session procedures, and, you know,
19 there's different policies that really aren't on issue
20 today dealing with how the Board implements the closed
21 session procedures. So we're very aware of them and
22 we're going to consider them and they're definitely not
23 following on deaf ears.

24 But with that and with reminding you that we
25 will definitely accept comments through next Friday as

1 well, we're going to go right to the beginning of Part 5
2 and see if we can't --

3 MR. VINATIERI: I have a comment.

4 MS. RUWART: Yes.

5 MR. VINATIERI: First of all, a question. This
6 is Joe.

7 I want to make sure I understand this. So we
8 have two alternatives -- 5033, and then we have the
9 second alternative, 5033, which includes 5033 through
10 5033.3, right?

11 MS. RUWART: Yes.

12 MR. VINATIERI: So it's one or the other,
13 correct?

14 MR. HELLER: Correct.

15 MS. RUWART: At this point in time that's how
16 it starts.

17 MR. VINATIERI: Let me point something out. We
18 just spent an hour and ten minutes talking about the
19 second alternative.

20 MS. RUWART: Yes.

21 MR. VINATIERI: And I'll point out to you that
22 the second alternative, based upon all of the
23 discussions, is going to be costly because of the
24 discretionary decisions that have to be made by whom,
25 who knows; it's unworkable from the standpoint of all

1 these little discretionary issues that we just got into.

2 So you have that as a problem.

3 Secondly, going to 5033, first alternative
4 versus second, I'll just point out from a policy
5 standpoint, and I haven't said anything for an hour and
6 15 minutes --

7 MS. MANDEL: Yes.

8 MR. VINATIERI: Exactly. Everyone else has,
9 Marcy.

10 We have a voluntary tax compliance system. And
11 to the extent -- to the extent that we have a system
12 here where people perceive that they're giving up their
13 rights, i.e. their ability to appeal is predicated,
14 their ability to have due process is predicated on
15 giving up their right to confidentiality, you chill
16 those rights and you pull the rug out from underneath
17 our voluntary system, to some extent.

18 And I just -- I would point out to everybody
19 that when making a determination between one and two,
20 first alternative, second alternative, we need to keep
21 in mind the policy that we have here, we need to keep in
22 mind the workability.

23 And I would just -- I would posit to you that
24 this, the second alternative, is nothing more than the
25 top of the iceberg, the tip of the iceberg, with all

1 kinds of other things that we haven't even talked about
2 and we spent an hour and 15 minutes on. I'm done.

3 MS. RUWART: Thank you, Joe. Those are very
4 good comments.

5 The last two, I'm hoping there's not
6 significant comments, 5033.3, Privilege, and 5034, Fees,
7 everybody agrees to submit any comments in writing
8 unless somebody has a burning issue with either on one
9 of them? Thank you.

10 Turning to page 1, 5001. I'm just going to
11 skip part (a) because if there's any errors or omissions
12 or grammaticals, just please submit them in writing.
13 It's our scope of coverage. (b), same, it's just talks
14 about how it all works; (c), Franchise Tax Board; (d)
15 our standard IFTA provision. I'm hoping there were no
16 burning questions on 5001.

17 5002, a slew of definitions. Is there anything
18 burning or substantive about 5002?

19 MR. MICHAELS: Well, yeah. This probably
20 all will be just as effective in writing, and I will
21 write, but I did make the point earlier that "hearing"
22 is defined to include a writing.

23 I also would make the point that I -- you know,
24 the definition of "department" there on page five at the
25 top, (j), includes the PUC, the XTB. I'm not sure how.

1 It becomes a bit unwieldy as you read into the rules, as
2 you get deeper into it, there are, you know, department
3 becomes -- it becomes confusing when it refers to the
4 FTB or the PUC, so that might be fine-tuned perhaps.

5 I also have some concerns about, oh, but again,
6 I'll put it in writing. There seems to be a blurring
7 between the concept of a participant and a party, and
8 I'm not sure whether a taxpayer's rep is a party or a
9 participant under this.

10 MS. RUWART: Okay. Very good. Those would be
11 great in writing. I can see that.

12 MR. DAVIS: Ken Davis. We've also proposed
13 some alternative language for "extreme hardship" and for
14 the definition of "reasonable cause," and those are
15 already submitted in writing.

16 MS. RUWART: Great. Thank you. I know we're
17 really going to seriously look at those -- rephrasing
18 those provisions.

19 Article 2, Requirements of Scheduling Board
20 Hearings. 5003 (a), the monthly meeting requirement,
21 any comments? 5003 (b), special meetings?

22 MR. MICHAELS: Oh, (a), actually -- sorry.

23 MS. RUWART: Yes. Go ahead.

24 MR. MICHAELS: In (a) -- Marcy Jo will remember
25 this for sure -- we had state assessee hearings

1 conducted in Los Angeles in the past, and I don't know
2 that -- if that should be -- that we should be precluded
3 or foreclosed from that. There have been times when the
4 only opportunity to get the state controller in the room
5 was to meet at a hotel at LAX.

6 MS. RUWART: Okay. That's a really good point.
7 I think we can just agree to change that, because we
8 have traveling controllers these days.

9 UNIDENTIFIED SPEAKER: That was very diplomatic
10 of you.

11 MS. RUWART: Special meetings, (b); (c),
12 teleconference, allows us to hold them.

13 MR. MICHAELS: That would actually be a Board
14 meeting just like yesterday's Board meeting, but it
15 would be telephonic?

16 MS. RUWART: Yes. We've done that. It's
17 usually for very defined issues.

18 5004, the Annual Adoption of Board Meeting
19 Calendar. This is just helpfulness. Any subsection (a)
20 comments? (b)? (c)?

21 MS. MANDEL: Carole, I'm sorry.

22 MS. RUWART: That's okay.

23 MS. MANDEL: Going back to Peter's comment. I
24 think the reason why you probably had that about
25 hearings is because all the Board staff that would be

1 responsible for regular hearings being here. It's true
2 we did hold them and we have several in LA. I remember
3 one painful year in particular where the hearing kept
4 getting continued and continued because it was under the
5 old let's actually really have a full hearing on
6 everything, and they did hold it to get the controller
7 present, but that's just a . . .

8 MS. RUWART: I'm totally with it. There's no
9 intent in this regulation to unnecessarily restrict the
10 Board from doing what it needs to do.

11 MS. MANDEL: Cool.

12 MS. RUWART: 5005, the Right to Oral Hearing.

13 MR. MICHAELS: Now, this says "receipt" as
14 opposed to "mailing." Usually Board correspondence is
15 tied to the date that's -- it's fine with me. It's
16 actually beneficial to a taxpayer to be tied to a
17 receipt rather than the date on the letter, but most
18 sales tax notices of determination, you have 30 days to
19 appeal from the date on the notice.

20 MS. RUWART: We'll double-check the date.
21 Yeah. We want to make everything consistent. That's
22 for sure.

23 MR. DAKESSIAN: Question on 5005. This is
24 Marty Dakessian.

25 MS. RUWART: Yes.

1 MR. DAKESSIAN: In the current rules of
2 practice, the Board has a hearing on a claim for refund
3 is discretionary. Is that required by statute?

4 MS. MANDEL: The hearing, because there's no
5 statutory right to a hearing on a refund claim, that
6 it's only on a petition, so that's . . .

7 MR. DAKESSIAN: Does this affect that in any
8 way?

9 MR. HELLER: It just continues to state that
10 it's discretionary. Generally the Board has almost
11 always provided a hearing. I'm really not familiar with
12 a case where they didn't. To the extent that there was
13 a reason not to, for instance, a taxpayer has already
14 been heard on petition or an appeal from the FTB on
15 assessment and they have not raised a single new issue
16 and the taxpayer is more than happy to proceed to court,
17 there would be no reason to have one and it's not
18 required by law.

19 MS. RUWART: Okay. 5005.1, the
20 acknowledgement.

21 MR. DAVIS: This is Ken Davis. Just throughout
22 Part 5 -- and this is the first time it appears -- just
23 a global change, Carole, that we're making, and that is,
24 we're referencing or putting in language where certain
25 sections do not apply to the Franchise Tax Board and we

1 refer the taxpayer back to Part 4.

2 MS. RUWART: Great. Very good.

3 Any other comments on 5005.1? Yes.

4 MS. MANDEL: When you refer to the Appeals
5 Division decision, that's the decision and
6 recommendation; right?

7 MR. MICHAELS: Yeah. I had that highlighted,
8 too.

9 MS. MANDEL: They don't really make any -- you
10 know, they have no independent authority to actually
11 make a decision. It's always a recommendation.

12 MR. MICHAELS: Well, what's a D & R? What's
13 the D stand for?

14 MS. MANDEL: Decision. But all this says is
15 there's a decision.

16 MR. HELLER: They're not a binding decision,
17 and they're recommendations, essentially.

18 MS. RUWART: Okay. Very good. Good catch.

19 5002.2, Consolidation.

20 MR. MICHAELS: Definitely. Well, we will
21 recall that when we talked about part three there was a
22 discussion about consolidation which contemplated, at
23 least in the state assessee context, if the petitioner
24 doesn't want cases consolidated, the petitioner can veto
25 consolidation.

1 MS. RUWART: Okay.

2 MR. MICHAELS: And so at a minimum this would
3 have to be consistent or, you know, in harmony with part
4 three.

5 But it also strikes me that consolidation --
6 yeah, as long as there's an out. You know, I don't have
7 a problem with consolidation being subject to the
8 discretion of the Chief or the Board Chair so long as
9 the petitioner can opt out if the petitioner wants to.
10 If we want something -- if we don't want something
11 consolidated we can prevent that. Otherwise, fine.

12 MS. RUWART: Okay.

13 MR. DAVIS: Ken Davis. We're just suggesting
14 that this section we think is a good section, and it
15 does apply to the Franchise Tax Board, but because of
16 the numbering system you've got it with, in the 5005
17 series, that that be just changed as its own section
18 number. And then we're providing some additional
19 language as to -- to provide a deadline within which to
20 respond to any requests for consolidation and then for
21 determination.

22 MS. RUWART: Very good. 5006, the Notice of
23 Hearing and Response. (a) is the general procedures.
24 Any comments on subsection (a)(1)? And then (a)(2)?
25 It's just reflects the different notice of hearing

1 timing. That reflects current practice. 5006 (b), any
2 comments on 1 through 5? Subsection (c), the response
3 to the notice of hearing? I think this all exists is
4 existing practice. Subsection (d), the waiver of the
5 notice. Subsection (e), the failure to respond to the
6 notice. Let's do subsection (1). Any comments?
7 Subsection (2)? Subsection (3)?

8 MR. DAKESSIAN: I have a question.

9 MS. RUWART: Extreme hardship is in here again.

10 MR. DAKESSIAN: I have a question regarding
11 (e)(1). I'm sorry. We just went past there.

12 MS. RUWART: Sure.

13 MR. DAKESSIAN: Just a question on what the
14 current practice is of Board Proceedings. Where it says
15 if the taxpayer fails to return the response to notice
16 of hearing, what is the current practice of Board
17 Proceedings when, for instance, in a petition for
18 redetermination the taxpayer requests a hearing but then
19 somehow through oversight there's no response to the
20 notice of hearing, does Board Proceedings call them to
21 verify or --

22 MS. PELLEGRINI: This is Debbie Pellegrini.
23 What we do is we submit it for the record and send a
24 letter to tell you what we've done, and then we also
25 give you the opportunity, if you contact us, we'll move

1 you back.

2 MR. DAKESSIAN: I noticed that there's several
3 points in time during the whole appeals process where
4 the taxpayer is asked as to whether they're going to
5 show up at the hearing. And I'm just thinking about the
6 small taxpayer who, you know, might request a hearing at
7 one point and does not.

8 MS. PELLEGRINI: Our statistics on this is that
9 it's somewhere between 40 and 50 percent of the
10 taxpayers who have requested a hearing fail to respond
11 to this notice and end up on the nonappearance calendar
12 and stay there.

13 MS. RUWART: Any more on (1), (2) or (3)?

14 Moving to section 5007, Dismissal, Deferral and
15 Postponement of Hearing.

16 MR. MICHAELS: Yeah. "Dismissal," is that a
17 term of art? What is that? Where did that come from?
18 The reason I raise it is just exhaustion-related
19 concerns that I have, exhaustion of the administrative
20 remedy-related concerns.

21 MS. MANDEL: Well, look at the three -- this is
22 Marcy -- look at the three reasons given for dismissal.
23 I know that the Board uses that phrase when -- you know,
24 there's an example, we had one announced in public
25 session yesterday. There was a case on the public

1 agenda for an income tax matter, and it was announced
2 that -- I can't remember if it was just that the
3 taxpayer agreed that the tax was due and had filed
4 something asking, you know, to dismiss the appeal, but
5 the appeal would only get dismissed if it's already been
6 accepted into the system so it's a pending appeal or
7 pending petitioner claim, and then under this, the
8 taxpayer sends it in and says, oh, never mind, you know.

9 MR. MICHAELS: Is it the flip side of a
10 withdrawal?

11 MS. MANDEL: Well, it could be or not. It
12 could be FTB or the Department withdraws or concedes
13 some amount or there's a stipulation to some lesser or
14 different amount. So yeah, if all the taxpayer does is
15 say, oh, never mind, that would be what you might think
16 of as a withdrawal.

17 MR. MICHAELS: So you get a letter that says
18 your case has been dismissed, something like that?

19 MS. MANDEL: (Nodding head.)

20 MS. PELLEGRINI: Debbie Pellegrini. You do get
21 a letter, but it's based on, like, Franchise Tax Board
22 tells us that they have withdrawn, they've settled,
23 they've decided to --

24 MR. MICHAELS: Never got the letter.

25 MS. PELLEGRINI: -- appeal, or, as yesterday,

1 there was a signed stipulation. Therefore, the taxpayer
2 said, I withdraw my appeal, and it was dismissed in
3 writing.

4 MR. MICHAELS: All right. Thank you.

5 MS. RUWART: So the bottom line is, we think
6 that's the correct word.

7 MR. MICHAELS: I'm just asking on origin. I'm
8 not disagreeing with it.

9 MS. RUWART: Subsection (b), deferral or
10 postponement. We've got a few different circumstances.
11 (b) (1), any comments on either the timing or the
12 circumstances?

13 MR. DAVIS: This is Ken Davis. We've added
14 three additional circumstances under (b) (1), which is
15 really a short time with -- for a short time period
16 deferral or postponement, and the three additional
17 circumstances are where the Chief of Board Proceedings
18 has been informed that the parties have requested a
19 deferral or postponement, and that's in the current
20 reg 5071. That's one circumstance.

21 Another circumstance is where the Chief has
22 been informed by the FTB that the appeal's been
23 reviewed -- is being reviewed for possible settlement,
24 and that's consistent with current practice, or
25 settlement consideration.

1 And then we think there ought to be a catchall
2 just to allow some additional discretion to the Chief
3 and the Board for any other reasonable cause or
4 circumstances.

5 MS. RUWART: Very good.

6 MR. SCHUTZ: Isn't there a catchall in three --
7 I'm sorry -- (b), (c) (3)? Is that right? Or (b) (3)?

8 MS. RUWART: That's only for additional. And
9 he's talking about the first postponement. If the first
10 postponement doesn't fall into one of the three existing
11 categories, maybe there's a problem.

12 MR. SCHUTZ: (b) (3), the Chief of Board
13 Proceedings may, with the consent of the Board Chair,
14 grant a deferral or postponement if the circumstances
15 set forth in paragraphs (1) or (2) of this subdivision
16 are not met. So it's sort of a catchall.

17 MR. DAVIS: Thank you.

18 MR. MICHAELS: One other observation on (b),
19 5007 (b) (1). 90 days obviously isn't going to work for
20 state assesses. I don't know if there was a carve-out
21 here or . . .

22 MS. RUWART: Well, it says for up to 90 days.

23 MR. MICHAELS: Oh, up to. Thank you.

24 MS. RUWART: Yeah. And more than 90 days is
25 with the consent.

1 MR. MICHAELS: Very good. Thank you.

2 MS. RUWART: Get it all in before
3 December 31st.

4 Any more questions on 5007? I think it's
5 pretty clear.

6 MR. DAVIS: Ken Davis. For deferral or
7 postponement for formal settlement negotiations, under
8 (2), we're going with -- or we're suggesting current
9 practice, and that is that the Chief grant a deferral
10 postponement for nine months, which is the current
11 practice. And then we understand from our settlement
12 bureau that it's nine months and thereafter for periods
13 of time in 160-day increments. That's one suggestion
14 for the time period.

15 MS. RUWART: Okay.

16 MR. DAVIS: The other is, we're suggesting two
17 other -- a couple other time periods for postponement,
18 and that is that there be a determined or a definite
19 time period set by the Chief of Board Proceedings, or if
20 there's a related matter that's pending in state or
21 federal court, or if it's an unrelated matter, but a
22 significant case that's pending in state or federal
23 court, we think that also warrants a time for deferral
24 or postponement. And then we've also added another
25 clause relating to any deferral or postponement for a

1 pending bankruptcy until the conclusion of the
2 bankruptcy.

3 MS. RUWART: Okay. Good.

4 MS. MANDEL: Did our legal guys -- didn't we
5 have some conclusion on bankruptcy or was that just in
6 the state assessment? Or whether we could hear --

7 MS. PELLEGRINI: We go through on the sales and
8 use tax, but we defer the Franchise Tax Board cases.

9 MS. MANDEL: Okay. Thank you.

10 MS. PELLEGRINI: And we defer them for as long
11 as it takes on all of these, the assignments, the court
12 cases and the bankruptcy. And that's current practice,
13 so this -- what is proposed would change current
14 practice.

15 MS. RUWART: 5008, Representation at Hearings.
16 Any comments on Subsection (a)?

17 Any comments on Subsection (b)? These are
18 pretty much existing from the existing rules, I believe.

19 And Subsection (c)?

20 MR. DAVIS: This is Ken Davis.

21 On the overall section, one thing we're
22 recommending is that this section, 5008, that staff look
23 at this to conform to AB139, and there's a new section,
24 the rev and tax code, 19523.5, which talks about
25 suspension or actions to suspend or disbar a person from

1 practice before the FTB.

2 MS. RUWART: Okay. All righty. We'll do that.

3 MR. SMITH: Carole?

4 MS. RUWART: Yes.

5 MR. SMITH: Chris Smith.

6 Just a question. If a taxpayer who did have a
7 language barrier brings a child who is a minor, would
8 that fall under this category to translate for them? I
9 think we have had that in one case.

10 MS. RUWART: I'm sure we have, or if we
11 haven't, we will.

12 That's a -- it's -- we wouldn't consider them a
13 representative, but an interpreter. And we would, you
14 know, obviously we want to accommodate that situation to
15 the maximum, so we don't -- I don't think we would see
16 that that would prevent that.

17 MR. SMITH: Great, thank you.

18 MS. RUWART: If there's no other on Section 2,
19 we can move to Section 3, Prehearing Documents and
20 Preparation, Section 5009, Power of Attorney, Subsection
21 (a), any comments?

22 Subsection (b), the form has to contain the
23 proper information. I believe this is all consistent
24 with the existing requirements.

25 Moving on to Section 5010, Contribution

1 Disclosure Forms.

2 MS. MANDEL: Is this our existing regulation?

3 MS. RUWART: Brad, is this our existing?

4 MR. HELLER: It's our current policies on the
5 return of the documents and it doesn't change any of the
6 current regulations that we have. I think they're
7 actually in the 7000 sections.

8 MS. MANDEL: They're in the 7000 sections so
9 here in (a) when it refers to "adjudicatory proceeding,"
10 that refers to the Kopp Act itself, which is in the 7000
11 series, and would it be advisable -- or you have it down
12 here, (d), that 7000, okay.

13 MR. HELLER: Right. It's specifically
14 referenced. And our biggest concern really was to just
15 to make sure that people would know they were out there.

16 MS. MANDEL: Right.

17 MR. HELLER: Instead of looking for all the
18 procedural rules in this group of regulations, we want
19 them to know where to go to find out all of that.

20 MS. RUWART: Any comments on (b), (c), or (d)?

21 Moving on to Section 5011, the Hearing Summary.

22 Yes.

23 MR. MICHAELS: Yes. (b) appears later to
24 constitute a definition. Let me bump you forward to
25 5012(b) (3) where it says, "A brief shall be considered

1 filed on the date of mailing as defined" -- oh, is that
2 just defining date of mailing? Okay. I take it back.

3 MS. RUWART: Okay.

4 (a) or (b), any comments? Okay.

5 Section 5012, Additional Briefing, is there any
6 comments on Subsection (a)?

7 MR. VINATIERI: This is Joe.

8 I had a question on it.

9 MS. RUWART: Sure.

10 MR. VINATIERI: I put on the comments that I
11 sent in about the current 5075, which gives a taxpayer a
12 right to file a brief.

13 Does this do anything to take away from that
14 right? I mean, 5075 is the current reg, and I know
15 we're doing new regs here. I want to make sure that if
16 a taxpayer chooses to file a brief, that they continue
17 to have that right to do so.

18 MS. MANDEL: That's what 45 days is for.

19 MR. VINATIERI: Right, it's -- right now
20 it's --

21 MR. HELLER: As far as filing.

22 MR. VINATIERI: -- 45 days.

23 MR. HELLER: As far as filing a brief to a
24 business tax appeals is that what your concern is?

25 MR. VINATIERI: Correct.

1 MR. HELLER: Actually we did as part of that
2 packet that we were looking at this morning that
3 contained the new regulations or amendments to
4 regulations that we posted on Friday, I did post
5 briefing schedules for business tax appeals, which I
6 personally omitted from Part 2 in the first draft, and,
7 so I did receive comments indicating that I omitted it,
8 and it is now there. So there is grounds for that. You
9 can take a look at. It does give the taxpayer an
10 absolute right. There's no requesting permission.

11 And it also gives me a right to file a reply
12 brief as well as long as it's only on issues that are
13 just being raised in the other side's reply and the
14 department's reply. So they are allowed to file briefs,
15 and this does not change the general briefing schedule.
16 It's just essentially for those situations where
17 additional briefing is needed. And I thought that I had
18 a briefing schedule in when we wrote this.

19 MS. MANDEL: Are you talking about 5011(a),
20 Joe, that a hearing summary is --

21 MR. VINATIERI: No, no, no.

22 MS. MANDEL: -- going to come out at the same
23 time as your brief?

24 MR. VINATIERI: No. This is 5012. When I read
25 this, I didn't see the right to file a brief like we

1 have today.

2 MR. HELLER: Correct.

3 MR. VINATIERI: And so I thought, what's
4 happened here?

5 MS. RUWART: Oh, because each briefing schedule
6 is in each specific part, that's why. So what we've
7 done is we've kind of skipped from a hearing summary,
8 and then, I guess, you have to go outside to get your
9 particular briefing schedule, come back, and then
10 decide, okay, is there additional briefing? That's a
11 common procedure to all programs. I think that's what's
12 happening here.

13 MR. VINATIERI: It's in the new.

14 MR. HELLER: The new stuff that came out on
15 Friday that we handed out this morning --

16 MR. VINATIERI: Okay.

17 MR. HELLER: -- does have that as amendments in
18 Part 2, and there's really -- that's really the only
19 major substantive amendment to Part 2, was the inserting
20 of the briefing schedule.

21 It actually contains two proposals. Marty
22 basically made some suggestions that essentially that
23 our briefing schedule really didn't provide people
24 enough time to do their briefing properly. It's a much
25 shorter period of time than, for instance, appeals from

1 a Franchise Tax Board briefing schedule.

2 So we do have actually two proposals in
3 here -- one that just barely tinkers with our current
4 schedule, and one that's brand-new that changes things
5 so that we can provide more time.

6 MR. MICHAELS: Could I ask one question about
7 (a)? And that is -- I don't want to interrupt you.
8 Were you done?

9 MR. HELLER: No, go ahead.

10 MR. MICHAELS: It says in (a), "If the Board or
11 Board staff determines that insufficient briefing or
12 evidence has been provided after reviewing the hearing
13 summary," in some instances Board staff is really a
14 party, isn't it? So if they wanted to pad their own
15 case by concluding there's not enough support for their
16 position, they could suggest that there's insufficient
17 briefing, so they themselves --

18 MR. VINATIERI: Peter.

19 MR. HELLER: Yes, in our -- we did not envision
20 that the department, which is Board staff, or that an
21 auditor would request that a particular party do
22 additional briefing.

23 It was really intended that the appeals
24 division basically, who is trying to write a hearing
25 summary, would take part in the process of helping the

1 Board determine when additional briefing was necessary,
2 and that hearing summaries or decisions and
3 recommendations might recommend additional briefing in
4 some cases, especially if there's, you know, no
5 appeals --

6 MR. MICHAELS: I mean, the sort of plain, plain
7 meaning of it would be that.

8 MR. HELLER: It is very broad as it's currently
9 written, and it was because we really didn't have every
10 nut and bolt of who would be doing what at which stage.

11 So we did want to make it broad enough to
12 encompass that, but we really only intend the appeals
13 division -- I don't think staff would have any problem
14 narrowing it down.

15 MR. MICHAELS: Well, this certainly is an
16 invitation for self-serving advocacy.

17 MR. HELLER: Absolutely. You know, and I think
18 also staff certainly --

19 MR. VINATIERI: This is totally insensitive,
20 Peter, appearing very insensitive.

21 MR. HELLER: We'll definitely take that into
22 consideration.

23 MS. RUWART: We could think about changing
24 that.

25 MS. PELLEGRINI: In response to what Joe was

1 saying, maybe there could be some reference to the other
2 briefing schedules so there isn't confusion.

3 MR. VINATIERI: Right, that's a good idea.

4 MS. PELLEGRINI: Because some people do go to
5 this Section 5 first.

6 MR. VINATIERI: That's -- that's what I do
7 under the current rules. So now because we're
8 elongating it, we have to make sure we get the right
9 part, so I think that's a good idea to do the reference.

10 MS. RUWART: Good. All right. Any more on
11 Subsection (a) -- of Subsection (b), the Briefing
12 Schedule and the Response to Hearing Summary?

13 Any on (1), (2), or (3)? Okay.

14 Subsection (c), the General Requirements of a
15 brief. These are -- these are taken from existing
16 requirements.

17 Comments on 5013, Preparation for Presentation
18 of Hearing, subsection (a), the scope of the hearing.

19 MS. MANDEL: Yeah. Not every oral hearing is a
20 quasi-judicial proceeding.

21 MR. VINATIERI: Just delete that sentence.

22 MR. MICHAELS: On that same subparagraph or
23 subdivision here, the last sentence, "or may inquire
24 into relevant new matters," is this from something that
25 is already in existence or . . .

1 MS. RUWART: I believe that's an existing
2 regulation, isn't it?

3 MR. VINATIERI: It is.

4 MS. RUWART: Yeah. And the key word is
5 "relevant."

6 MS. MANDEL: Well, and set forth in the
7 petition, Peter, with respect to business tax matters,
8 you are not limited to things that you raise in your
9 petition. You may raise anything at any time up to the
10 time that the Board actually makes its decision. So
11 there's a specific statute.

12 MR. VINATIERI: You can amend it.

13 MS. RUWART: Subsection (b), the time
14 allocation, the default time allocation; and then we
15 have subsection (c), the request for additional time;
16 and (d) is modification. Let's just take all those
17 together.

18 MR. DAVIS: Carole -- this is Ken. We're
19 thinking of a section between those two, to add back in
20 two current regulations. One is subpoenas and the other
21 is burden of proof, because we're in a section dealing
22 with preparation for presentation of hearing. We think
23 that's a good place to maybe add those back in.

24 MS. RUWART: Okay. Anything about time,
25 deciding about time, having time. Okay. That's great.

1 Section 5014, Presentation of Evidence --

2 MR. VINATIERI: I'm sorry, Carole. Item (d),
3 section (d), I had added the language here about the
4 Board Chair granting further time for parties'
5 presentation if circumstances during the hearing so
6 require. I think that's already the discretion, but I
7 think we ought to put it in there and make it clear.

8 MS. RUWART: Okay. You wrote that comment
9 somewhere; right?

10 MR. VINATIERI: It's in my . . .

11 MS. RUWART: Okay. Good. Thanks. That's a
12 good comment.

13 5014, Presentation of Evidence or Exhibits.
14 Anything on subsection (a), subdivision (a)?
15 Subdivision (b)? This is our current written policy.

16 MS. MANDEL: Is there somewhere else in here
17 where it says that the Board may consider -- what's that
18 magic phrase? -- any evidence?

19 MR. VINATIERI: "Relevant evidence."

20 MS. RUWART: Yeah. Goes towards the weighing
21 of the evidence.

22 MS. MANDEL: A reasonable man, blah, blah,
23 blah, or whatever it says, is that -- did we drop that
24 out?

25 MR. DAVIS: Ken Davis. We're suggesting that

1 the bottom of -- after (c) three additional regs go back
2 in, and one is liberal presentation of evidence, which I
3 think that's the one you're talking about. It's the
4 ability to weigh the evidence. Another is stipulation
5 of facts. And the third is official notice, that if the
6 Board wants to take official notice of certain things
7 they can.

8 Also, while the heading's marked "Presentation
9 of Evidence and Exhibits," exhibits is also a section
10 dropped that's -- that needs to be back in. It's the
11 section dealing with marking of exhibits.

12 MR. DAKESSIAN: Can I ask a question here?

13 MS. RUWART: Sure.

14 MR. DAKESSIAN: Marty Dakessian. Why was
15 the -- the previous language used to read "any evidence
16 that responsible persons are accustomed to rely upon in
17 the conduct of serious affairs," why was that removed?
18 Why do you go "relevant"? Just curious.

19 MR. HELLER: I don't know. In looking at it, I
20 could not see -- I don't know. It really seemed to me
21 that as an attorney "relevant" seemed to pick up that
22 long phrase of information. So I could probably include
23 it again, but it's . . .

24 MS. MANDEL: It's a long-standing standard in
25 both . . .

1 MR. VINATIERI: This is Joe. That's the
2 standard at local property tax appeals cases in front of
3 AABs. It's been the basic watch word here for years.
4 And there's a lot of us who get warm and fuzzy feelings
5 when we hear that language. And not just at Christmas
6 or holiday time.

7 MS. RUWART: Whenever you're feeling blue, Joe?

8 MR. VINATIERI: I'm sorry. Never mind.

9 MS. RUWART: Never mind.

10 MR. VINATIERI: We're punchy. This has been a
11 brain drain.

12 MS. RUWART: All right. Any other questions or
13 comments on 5014? Those are all good comments.

14 5015, Witnesses, (a), (b), (c), (d).

15 MR. SCHUTZ: I have one quick comment or
16 question. With witnesses -- somebody had once asked if
17 the witness -- you had extra time given to cross-examine
18 the witness, if both parties can; and also, can you take
19 your witness and just have them sign up as a public
20 speaker or does it make it a public comment so you get
21 extra, additional time besides the ten minutes? So you
22 just bring your witness and say, hey, sign up to make
23 public comment and then you have an extra three minutes
24 to give your presentation? You kind of get around your
25 ten-minute burden.

1 MR. VINATIERI: I like that.

2 MS. RUWART: I think we keep telling people
3 that --

4 MR. VINATIERI: Thank you.

5 MS. RUWART: -- any member of the public can
6 comment on any matter.

7 MR. SCHUTZ: Right. So you just have your
8 witnesses sign up as public comments and you'd have
9 extra time.

10 MS. RUWART: What it goes to is the Board is
11 entitled to give things the weight that it deems it
12 deserves, so . . .

13 MR. SCHUTZ: So I just wasn't sure if there was
14 any extra provision to give extra time to the witness or
15 not.

16 MS. RUWART: I think the extra time all goes
17 into the -- just the general timing of it. If you think
18 that we need to provide a special extra time provision
19 in the witnesses provision, that would be a comment we
20 would consider, but I think we put all the time
21 constraint issues into one section and one discretion.

22 Is there anything, (a), (b), (c), (d)?

23 MR. DAVIS: Just quickly on (b), there's a
24 suggestion or there's language about encouragement of
25 the parties to provide the names of witnesses, but it

1 doesn't say when. We think the trigger point ought to
2 be, as current practice is, as part of the response to a
3 hearing notice, because that includes -- it's an entire
4 form that says please list the names of your witnesses
5 and their address. And so that's -- we've just included
6 that.

7 MS. RUWART: Okay. That's great. Thank you.

8 Moving on to Section 50 -- oh, no. We're not
9 going to talk about that one. Sorry. Somebody almost
10 got me. Skipping 5015.1 and going to Article 3, 5016,
11 Hearing Agendas, is there any comment on (a) or (b) or
12 (c)? This is more internal Board process, but it's
13 explained in our regulation.

14 MS. MANDEL: Well, I just kind of have a
15 question -- and, of course, Ami's not here, right? --
16 which is, are those -- those draft agendas, are they
17 public documents now? And if they're not public
18 documents now, are you somehow making them public
19 documents so that 30 days before any Board meeting
20 somebody can make a Public Records Act request, get a
21 copy of that agenda and then go solicit business, which
22 was a problem we had some time ago when somebody was
23 potentially maybe just, you know, somehow finding out
24 what things were coming up on agendas in some way?

25 MR. VINATIERI: Who did that?

1 MS. MANDEL: I don't know, but I heard.

2 MS. PELLEGRINI: I can answer that. Yes,
3 anybody could make a public records request of that
4 document --

5 MS. MANDEL: For the draft?

6 MS. PELLEGRINI: -- and it would be a
7 disclosable document.

8 MR. MICHAELS: What draft are you talking
9 about, Marcy?

10 MS. RUWART: What we're talking about is
11 subsection (a), subdivision (a).

12 MR. SCHUTZ: How much time do you have to
13 respond to a public records request?

14 MS. PELLEGRINI: We have ten days to tell them
15 how long we can get it.

16 MR. SCHUTZ: It may be a moot point. Yeah,
17 we'll tell you in ten days and then --

18 MS. PELLEGRINI: Or ten days to answer and --

19 MR. SCHUTZ: -- and in ten days it's over.

20 MR. HELLER: I don't think it's this regulation
21 that makes it disclosable. Currently, basically a
22 record that's maintained on a regular basis by the
23 Board, that's what makes this disclosable.

24 MS. MANDEL: Just remember, taxpayers complain.

25 MS. RUWART: Subsection (b) or (c), any

1 comments? Great. Section 5017, the Public Agenda
2 Notice, I think that's a document everybody here is
3 familiar with. Are there any comments in
4 subsection (a)?

5 MR. VINATIERI: I'm sorry. This is Joe. I had
6 put in there, instead of ten days, making it 15 days. I
7 know that causes problems potentially. I'm not wedded
8 to that, but I do think it's important that that
9 agenda -- the calendar get out there as quick as
10 possible.

11 For those of us who rely on that agenda and we
12 go through and look for things that are of interest, the
13 closer you get to the day of the hearing, the more
14 difficult it is for calendars and people to do things.

15 So as a matter just of a policy -- and I'll do
16 away with my 15 calendar day -- but I would appreciate
17 it if the Board and the Board Proceedings Division could
18 get it out as quickly as possible, because people do
19 look at it.

20 MS. MANDEL: This is the Bagley-Keene ten days.
21 That's why it says that.

22 MR. VINATIERI: Well, it has to be ten days,
23 but there's nothing to keep it from being prior to the
24 ten days.

25 MS. ARMENTA-ROBERTS: You get better flights on

1 Southwest.

2 MR. VINATIERI: Yeah.

3 MS. RUWART: Okay. We'll take that into
4 consideration.

5 Subdivision (b), the contents of the public
6 agenda notice.

7 MS. PELLEGRINI: This is Debbie Pellegrini.
8 All this is doing is really repeating what's in the
9 Bagley-Keene, because I think many of us were needing to
10 inform others why we were doing things the way we were
11 doing them. It puts it in our regulation.

12 MS. RUWART: Okay. So on (b), (c), or (d),
13 anything?

14 MR. VINATIERI: No.

15 MS. RUWART: Okay. On to Article 4 and
16 Section 5018, this is the day of the hearing. As you
17 can see, our procedure is to tell a story here, so now
18 we're at the day of the hearing.

19 Any comments?

20 MR. VINATIERI: This is exciting, you know.

21 MS. RUWART: Arrival Time.

22 Can you feel the tension?

23 MR. VINATIERI: I just --

24 MS. RUWART: Yeah.

25 MR. VINATIERI: Right out here in the hall.

1 MS. RUWART: Any questions, comments on
2 Subdivision (a)?

3 MR. MICHAELS: This can come up and the word
4 "agents" and "representatives" seem to be
5 interchangeably used, and for these purposes, it might
6 be preferable to use "agents" since that's what the Kopp
7 Act refers to, or "participants" and "agents" rather
8 than "representatives."

9 MS. RUWART: Yes. Very good.

10 Any comments on Subdivision (b), the 30-minute
11 prior arrival time?

12 Any comments on 5019, the sign-in?

13 Subsection (a) has several parts.

14 MR. MICHAELS: Could I -- could I go into
15 reverse quickly here?

16 (3)(B) spooked me a little bit. It says,
17 "Appeals staff shall review evidence and exhibits
18 submitted at the sign-in desk."

19 I suppose that's at the last minute.

20 MS. RUWART: We aren't there yet.

21 MR. MICHAELS: Oh.

22 MS. RUWART: That's okay. I was just going to
23 do (a)(1) first.

24 MR. MICHAELS: Sorry.

25 MS. RUWART: That's all right.

1 The appearance sheet, we have an appearance
2 sheet. Any questions or issues about that?

3 MR. VINATIERI: No.

4 MS. RUWART: No. 2, Contribution Disclosure
5 Forms, just reciting the requirements.

6 Now, we get to (3) (A) and (B).

7 MS. MANDEL: On (2), when you are saying, "In
8 general the Board will not hear a matter unless
9 contribution disclosure forms have been completed."

10 MS. RUWART: It picks up the same word
11 "completed." Do you want a different word?

12 MS. MANDEL: No, I'm -- no.

13 MS. RUWART: Okay.

14 Moving to (3).

15 MR. MICHAELS: (3)?

16 MS. RUWART: Yes, here we go, Peter, (A), (B),
17 (C), and (D).

18 MR. MICHAELS: Bingo. I looked at the
19 definition of "brief," which is on page 4(g), as in
20 goodness, and then we come back here to page 19 to the
21 section we're talking about, it says, "Appeals staff
22 shall review" -- I'm not in the practice of bringing
23 things on the day of the hearing, but nonetheless,
24 "Appeals staff shall review evidence and exhibits
25 submitted at the sign-in desk and if any part the